S.B. Civil Writ Petition No.5362/2004
(Dhola Ram V/s The Assistant Engineer
PWD, Sanchore & Ors.)

Date of Order : 3/12/2004

HON'BLE MR. PRAKASH TATIA,J.

Mr. S.P. Sharma,for the petitioner/s

Heard learned counsel for the petitioner.

The petitioner is aggrieved against the order of the trial court dated 2.3.2002, by which the petitioner's application for grant of temporary injunction filed under Order 39 Rule 1 and 2 CPC was dismissed and further aggrieved against the order of the appellate court dated 23.8.2004, by which the petitioner's appeal was dismissed by the Appellate Court.

According to the learned counsel for the petitioner, the defendant – respondents took a plea that the land in question is belonging to the Public Works Department and also raised objection about the jurisdiction of the Civil Court in hearing the suit of the plaintiff, but at the same time, it is clear from the fact that the petitioner is in possession of the land in question as the petitioner's father purchased the disputed land on 30.8.1972 and paid a consideration of Rs.1,000/- to the seller. The petitioner is having possession order the land in dispute, therefore, when according to the defendant

the property is belonging to Public Works Department then the respondents-defendants have no right to interfere in the possession of the plaintiff. In view of the above facts and circumstances, the two courts below committed illegality in not granting relief of granting temporary injunction to the petitioner.

I considered the submissions of the learned counsel for the petitioner and perused the facts mentioned in the two orders. It is clear from the facts that the petitioner’s entitlement is from the unregistered and unstamped documents and the defendent's contention is that the petitioner has encroached upon the land just recent time only.

In view of the above, it cannot be said that the petitioner is in a settled possession of the property in dispute or he has a title to the property. The courts below considered the revenue record also and held that the plaintiff failed to make out any prima facie case for grant of relief.

I do not find that the courts below have committed any error of jurisdiction and error of law. The learned counsel for the petitioner tried to submit that there are documents evidencing petitioner's possession but there is no reason for this Court to appreciate and reappreciate the evidence which has

already been considered by two courts below.

In view of the above finding of fact, I do not find any merit in this writ petition and the same is hereby dismissed.

(PRAKASH TATIA)J.

Rm/